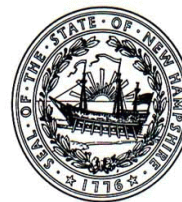


State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-3503 FAX (603) 271-2867



Buxton Oil Company
PO Box 900
Exeter, NH 03833

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 2000-034**

May 8, 2000

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Waste Management Division] Division (the Division) to Buxton Oil Company, pursuant to RSA 146-C:10-a and Env-C 601.05. The Division is proposing that fines totaling \$10,000 be imposed against Buxton Oil Company for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Waste Management Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Buxton Oil Company is a New Hampshire corporation having a mailing address of PO Box 900, Exeter, NH 03833.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 146-C:10-a authorizes the Commissioner of the Department of Environmental Services (DES) to impose administrative fines of up to \$2,000 per offense for violations of RSA 146-C.
2. Pursuant to RSA 146-C:10-a, I, the Commissioner has adopted Env-C 607 to establish the schedule of fines for violations of RSA 146-C.
3. Buxton Oil Company is the owner of five underground storage tank (UST) systems located at Buxton Oil Company, 24 Charter Street, Exeter, NH, further identified as UST #0-112777 (the Facility).
4. The Facility is subject to the requirements of RSA 146-C and the rules adopted pursuant to that chapter, NH Admin. Rules Env-Wm 1401.

5. Env-Wm 1401.32 requires all existing steel USTs to be protected from corrosion no later than December 22, 1998, by meeting the requirements of Env-Wm 1401.32(i).
6. If a UST does not have corrosion protection, Env-Wm 1401.32(j) requires the UST to be permanently closed.
7. Env-Wm 1401.33(b) requires all existing metal piping that routinely contains regulated substances and is in contact with the soil or other backfill material to be protected from corrosion no later than December 22, 1998.
8. Division records show none of the USTs and associated metal piping systems have corrosion protection, and that none were closed by December 22, 1998.

IV. Violations Alleged

1. Buxton Oil Company has violated Env-Wm 1401.32 by failing to protect the five existing steel USTs at the facility from corrosion or permanently closing the USTs no later than December 22, 1998.
2. Buxton Oil Company has violated Env-Wm 1401.33 by failing to protect the five existing steel piping systems at the facility that routinely contained regulated substances and are in contact with the soil or other backfill material from corrosion no later than December 22, 1998.

V. Proposed Administrative Fines

1. For the violation identified in IV.1. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the five violations noted above, the Division is seeking a total fine of \$5,000.
2. For the violation identified in IV.2. above, Env-C 607.03(e) specifies a fine of \$1,000 per violation. For the five violations noted above, the Division is seeking a total fine of \$5,000.

The total fine being sought is \$10,000.

VI. Hearing, Required Response

Buxton Oil Company has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, August 7, 2000** at **10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Pursuant to Env-C 601.06, Buxton Oil Company is required to respond to this notice. Please respond **no later than July 7, 2000** using the enclosed form as follows:

1. If Buxton Oil Company plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If Buxton Oil Company chooses to waive the hearing and pay the proposed fine, please

have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.

3. If Buxton Oil Company wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Buxton Oil Company's interest in settling.

Buxton Oil Company is not required to be represented by an attorney. If Buxton Oil Company chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Buxton Oil Company wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled, Buxton Oil Company must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Buxton Oil Company does not notify Mr. Ballentine in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Buxton Oil Company committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Buxton Oil Company committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

- * Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Buxton Oil Company proves, by a preponderance of the evidence,** applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Buxton Oil Company did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Buxton Oil Company did not benefit financially, whether directly or indirectly, from the violation.

- 2.2. At the time the violations were committed, Buxton Oil Company was making a good faith effort to comply with the requirement that was violated.

- 3.3. Buxton O3. Buxton Oil Company has no history of non-compliance with the statutes implemented by DES or with any permit issued by DES or contract entered into with DES.

- 4.4. Other information exists which is favorable to Buxton Oil Company. Other information exists which is favorable to Buxton Oil Company known to the Division at the time the fine was proposed.

*******IMPORTANT NOTICE*******

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the

hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed.

The hearing is Buxton Oil Company s opportunity to present testimony and evidence that Buxton Oil Company did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced. If Buxton Oil Company has any evidence, such as photographs, business records or other documents, that Buxton Oil Company believes show that Buxton Oil Company did not commit the violation(s) or that otherwise support Buxton Oil Company s position, Buxton Oil Company should bring the evidence to the hearing. Buxton Oil Company may also bring witnesses (other people) to the hearing to testify on Buxton Oil Company s behalf.

If Buxton Oil Company wishes to have an informal meeting to discuss the issues, Buxton Oil Company must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via the DES Web page (www.state.nh.us.des). If Buxton Oil Company has any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.

COPY

Philip J. O'Brien, Ph.D., Director
Waste Management Division

Enclosure (*NHDES Fact Sheet #CO-2 1999*)

cc: Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney
James Ballentine, DES Enforcement Paralegal
Thomas R. Beaulieu, Chief
Lynn A. Woodard, P.E., Supervisor

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APPEARANCE

____ I/we will attend the hearing scheduled for **Monday, August 7, 2000 at 10:30 a.m.** in **Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH.

Signature

Date

Name (please print or type):

Title:

WAIVER OF HEARING

____ I/we certify that I/we understand my/our right to a hearing regarding the imposition of the proposed administrative fine and that I/we hereby waive those rights. The fine payment in the amount of \$X paid to Treasurer, State of New Hampshire is enclosed.*

** If you pay by check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*

Signature

Date

Name (please print or type): _____

Title:

RETURN THIS PAGE ONLY TO:

James Ballentine, DES Enforcement Paralegal
Department of Environmental Services
6 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095